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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/736,139	12/15/2003	Thomas E. Creamer	BOC9-2003-0085 (456)	3696
40987	7590	11/24/2006	EXAMINER	
AKERMAN SENTERFITT P. O. BOX 3188 WEST PALM BEACH, FL 33402-3188			BRINEY III, WALTER F	
			ART UNIT	PAPER NUMBER
			2615	

DATE MAILED: 11/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/736,139

Applicant(s)

CREAMER ET AL.

Examiner

Walter F. Briney III

Art Unit

2615

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 September 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

1. **Claims 1-3, 5-8, 10-13 and 15 are rejected under 35 U.S.C. 102(e) as being anticipated by Owens et al. (US Patent Application Publication 2003/0053449).**

Claim 1 is limited to "a method of automatically resolving a Digital Subscriber Line failure." The instant amendment to the claim has removed the limitation rejected under 35 U.S.C. 112, first paragraph, as being directed to new matter, rendering the claim, in part, identical to the version treated apropos the Final Rejection filed 24 February 2006 hereby incorporated by reference. In addition, new limitations were added to each independent claim, which are treated below.

Please note that the independent claims recite similar subject matter, so claim 1 is taken as representative herein. The method of claim 1 now recites:

"a message informing a subscriber when resumption of service is expected, said message being sent by the administrative system for the Digital Subscriber Line after a predetermined amount of time to verify that service over the Digital Subscriber Line has not been restored to the subscriber."

The system and method of Owens has been previously showed to include transmitting the recited "message." As seen in figure 4B of Owens, this message is transmitted in step 440 from a remote server corresponding to the "administrative system for the

Digital Subscriber Line.” What has not been shown is whether this message is both (1) “sent after a predetermined amount of time” and (2) used “to verify that service...has not been restored to the subscriber.”

Regarding point (1), the plain meaning of the claim language suggests that relative to some antecedent event, a predetermined amount of time elapses before the administrative system issues said recited message. In light of the applicant’s specification, this event corresponds to the notification of the administrative system to the recited “failure.” However, the claim does not make this correlation in any manner. Therefore, the broadest reasonable interpretation is as stated above, from any antecedent event, a predetermined period of time elapses before issuing said recited message. Likewise, Owens discloses issuing the corresponding message in step 440 after a predetermined amount of time elapses as set forth in step 428. See paragraph [0066].

Regarding point (2), the message transmitted in step 440 comprises diagnostic information. Hence, any lack of restored service will certainly be verified by a diagnosis containing negative information regarding the connectivity of the Digital Subscriber Line service. Therefore, Owens makes obvious all limitations of the claim.

Claims 2, 3, 5-8, 10-13 and 15 are rejected for the same reasons set forth above regarding claim 1 as well as the respective reasons set forth in the Non-Final Rejection filed 23 June 2006.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 4, 9 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Owens in view of Rango (US Patent 6,788,705).

Claims 4, 9 and 14 are rejected for the same reasons set forth above regarding claim 1 as well as the respective reasons set forth in the Final Rejection filed 23 June 2006.

Response to Arguments

Applicant's arguments with respect to claims 1-15 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Walter F. Briney III whose telephone number is 571-272-7513. The examiner can normally be reached on M-F 8am - 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sinh Tran can be reached on 571-272-7564. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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SINH TRAN
SUPERVISORY PATENT EXAMINER